



DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket ID FCIC-21-0002]

RIN 0563-AC73

Common Crop Insurance Regulations; Small Grains Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, U.S. Department of Agriculture (USDA).

ACTION: Final rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Common Crop Insurance Regulations, Small Grains Crop Insurance Provisions and Malting Barley Price and Quality Endorsement. For the Small Grains Crop Insurance Provisions, the intended effect of this action is to allow enterprise units by type for wheat, to clarify policy provisions for consistency with other crop provisions that offer coverage on both winter and spring-planted acreage of the crop. For the Malting Barley Price and Quality Endorsement, the intended effect is to remove and reserve this section. The changes will be effective for the 2022 and succeeding crop years.

DATES: *Effective date:* [Insert date of publication in the **FEDERAL REGISTER**].

Comment date: We will consider comments that we receive by the close of business [Insert date 60 days after publication in the **FEDERAL REGISTER**]. FCIC may consider the comments received and may conduct additional rulemaking based on the comments.

ADDRESSES: We invite you to submit comments on this rule. You may submit comments by either of the following methods, although FCIC prefers that you submit comments electronically through the Federal eRulemaking Portal:

- *Federal eRulemaking Portal*: Go to <http://www.regulations.gov> and search for Docket ID FCIC-21-0002. Follow the instructions for submitting comments.
- Mail: Director, Product Administration and Standards Division, Risk Management Agency (RMA), US Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133-6205. In your comment, specify docket ID FCIC-21-0002.

Comments will be available for viewing online at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Francie Tolle; telephone (816) 926–7829; or email francie.tolle@usda.gov. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 or 844-433-2774 (toll-free nationwide).

SUPPLEMENTARY INFORMATION:

Background

The FCIC serves America’s agricultural producers through effective, market-based risk management tools to strengthen the economic stability of agricultural producers and rural communities. FCIC is committed to increasing the availability and effectiveness of Federal crop insurance as a risk management tool. Approved Insurance Providers (AIP) sell and service Federal crop insurance policies in every state through a public-private partnership. FCIC reinsures the AIPs who share the risks associated with catastrophic losses due to major weather events. FCIC’s vision is to secure the future of agriculture by providing world class risk management tools to rural America.

FCIC amends the Common Crop Insurance Regulations by revising 7 CFR 457.101, Small Grains Crop Insurance Provisions, and by removing and reserving 7 CFR 457.118, Malting Barley Price and Quality Endorsement, to be effective for the 2022 and succeeding crop years.

The changes to 7 CFR 457.101, Small Grains Crop Insurance Provisions, are as follows:

1. Throughout the Crop Provisions, FCIC is replacing all references of the “fall” type with “winter” type. Fall and spring-planted acreage are insured under the “winter” commodity type and “spring” commodity type, respectively, in the actuarial documents. This change is necessary for consistency between the Crop Provisions and actuarial documents.

2. Throughout the Crop Provisions, FCIC is replacing the phrase “initially planted” with the phrase “initially-planted,” where appropriate.

3. Throughout the Crop Provisions, FCIC is replacing all references of “growers” with “producers” to be consistent with the terminology used in the Common Crop Insurance Policy Basic Provisions.

4. Section 1 – FCIC is revising the definition of “Khorasan” by replacing the phrase “is considered to be” with “is considered.” The phrase “to be” is not necessary.

FCIC is revising the definition of “latest final planting date” to replace all references to fall and spring-planted acreage to winter and spring types. This change will eliminate any confusion of whether a winter final planting date exists in the actuarial documents if the Winter Coverage Endorsement is not selected. For example, Asotin County, Washington lists a winter final planting date for barley that is only applicable if the Winter Coverage Endorsement is elected. Otherwise, there is no applicable date in the fall and only spring final planting dates exist for the spring types. The intent of these provisions is to address when a county has both winter and spring types designated in the Special Provisions, regardless if the Winter Coverage Endorsement is elected.

FCIC is revising the definition of “small grains” to allow the flexibility to insure additional small grains varieties that are not currently listed in the actuarial documents.

This allows for insurance coverage to be offered via actuarial documents for varieties currently not insured when data become available, and it is appropriate to do so.

5. Section 2 – FCIC is designating the undesignated paragraph in section 2 as paragraph (b) and adding a new paragraph (a) to allow enterprise units by type for wheat. For example, if insured has winter and spring types, they may elect one enterprise unit for the spring type or one enterprise unit for the winter type, or separate enterprise units for both types.

For the wheat types, allowing separate enterprise units allows producers to be indemnified separately by type. The benefit for producers is that a loss on one type will not be offset by the gain on another type.

If an insured elects enterprise units by type, these enterprise units are not allowed to be further divided by practice and the insured may not elect enterprise or optional units by irrigation practices for the policy.

Additionally, the insured must separately meet the requirements in section 34(a)(4) of the Basic Provision for each enterprise unit they elect to have.

If the insured elects enterprise units by type and does not qualify for separate enterprise units, there are options based upon whether enterprise units are elected for one or multiple types and the timing of the discovery:

- If the insured elects separate enterprise units for multiple types and the AIP discovers the enterprise unit qualifications are not separately met for all types:

- 1) On or before the acreage reporting date the insured may elect to insure:

- a) All types in which they elected an enterprise unit for meeting the requirements in section 34(a)(4) of the Basic Provisions as separate enterprise units, and basic or optional units for any acreage that is not reported and insured as an enterprise unit, whichever the insured reports on the acreage report and for which the insured qualifies; or

b) One enterprise unit for all acreage of the crop in the county provided the insured meets the requirements in section 34(a)(4) of the Basic Provisions; or

c) Basic or optional units for all acreage of the crop in the county, whichever the insured reports on the acreage report and for which the insured qualifies.

2) After acreage reporting date, the insured will have one enterprise unit for all acreage of the crop in the county provided they meet the requirements in section 34(a)(4) of the Basic Provisions. If they don't meet the requirements in section 34(a)(4), the AIP will assign a basic unit structure for all acreage of the crop in the county.

- If an insured elects an enterprise unit for only one type and the AIP discovers the enterprise unit qualifications are not met for that type:

1) On or before the acreage reporting date, the insured's unit division for all acreage of the crop in the county will be based on basic or optional units, whichever the insured reports on the acreage report and for which the insured qualifies; or

2) After the acreage reporting date, the AIP will assign the basic unit structure for all acreage of the crop in the county.

FCIC is also revising the first sentence in redesignated paragraph (b) to rephrase the language to eliminate the need to list all optional unit choices from the Basic Provisions. This allows the Small Grains Crop Provisions to follow the Basic Provisions optional unit division language when and if those provisions in the Basic Provisions are updated, without a new regulation.

In newly redesignated paragraph (b), FCIC is revising the reference to section 34(b) of the Common Crop Insurance Policy Basic Provisions to 34(c). Section 34(c) is the appropriate reference.

In newly redesignated paragraph (b), FCIC is simplifying the paragraph by removing the list of insurable types that may be insured as separate optional units and replacing with a statement that separate optional units may be established by any insured

wheat type as long as each optional unit contains only initially-planted acreage of the type. The insured type can be listed in the actuarial documents or insured by written agreement to qualify. This change is needed in the event the insured elects enterprise units by type but does not qualify for enterprise units.

6. Section 3 – FCIC is revising the lead-in to paragraph (b)(2). This paragraph addresses counties that have both winter and spring sales closing dates. In some counties, the winter sales closing date only applies if the Winter Coverage Endorsement is elected. While these specific counties have a winter and a spring sales closing date listed in the actuarial documents, paragraph (b)(2) is not referring to these counties. Paragraph (b)(2) is only intended to apply to those counties where both winter and spring sales closing dates are applicable regardless of the Winter Coverage Endorsement election. Therefore, the lead-in is revised to include, in parenthesis, a statement that excludes dates specific to the Winter Coverage Endorsement.

FCIC is also revising paragraphs (b)(2)(i) and (ii) to replace the phrase “insured fall planted acreage” with the phrase “insurable winter planted acreage.” This paragraph provides guidance regarding the date by which producers can make changes to their insurance coverage depending on whether they have insured fall-planted acreage. The provisions state that if producers have insured fall-planted acreage, no changes can be made after the fall sales closing date. If producers do not have insured fall-planted acreage, then they can make changes up until the spring sales closing. All acreage of the crop in the county must be insured. Therefore, if the producer plants fall-planted acreage and it meets the insurability requirements in section 6, then it must be insured. FCIC received input from AIPs that the phrase “insured fall planted acreage” indicates that if producers planted fall-planted acreage but do not insure it, then they have until the spring sales closing date to make changes to the insurance coverage on the spring-planted acreage. That is not the intent of the provisions. Therefore, FCIC is revising the

language to indicate if producers planted insurable fall-planted acreage, then no changes may be made after the fall sales closing date. As explained above, “fall” is also being replaced with “winter,” as appropriate.

7. Section 5 – FCIC is removing the phrase “Special Provisions” and replacing it with the phrase “actuarial documents.” The cancellation and termination dates identified in this section are also found in the actuarial documents, rather than the Special Provisions. If FCIC determines that the cancellation or termination dates need to differ than what is provided in the Crop Provisions, then the modified date would be identified in the actuarial documents.

8. Section 6 – FCIC is removing paragraph (e). This paragraph refers to the Malting Barley Price and Quality Endorsement (MBPQE) published at 7 CFR 457.118. The MBPQE is no longer available to barley producers. Another endorsement, Malting Barley Endorsement was approved by the FCIC Board of Directors under Section 508(h) of the Federal Crop Insurance Act. The Malting Barley Endorsement replaced the MBPQE in 2016 and is not codified. Therefore, there’s no need to include a reference to the MBPQE within the Small Grains Crop Provisions.

9. Section 7 – FCIC is revising the lead-in sentence to paragraph (a)(1) to remove the reference to oats. FCIC is adding oats to paragraph (a)(2). Paragraph (a)(1) is for the crops for which there is only one planting season (either winter or spring); whereas paragraph (a)(2) is for the crops that have more than one planting season (winter and spring). In all counties where oats are insured, FCIC insures winter-planted oats, spring-planted oats or both. Therefore, oats are more appropriately placed in paragraph (a)(2) and are added within paragraph (a)(2) in every place there is a reference to barley and wheat.

FCIC is also revising paragraphs (a)(2)(ii) and (iii) to change the phrase “fall final planting date” and “fall and spring final planting dates” to “winter type” and “winter and spring types,” respectively.

FCIC is revising paragraph (a)(2)(iii)(A) to add the word “acreage” at the end of the following phrase: “Any winter barley, oat or wheat.” By adding “acreage” to this phrase, this lead-in phrase is consistent with the lead-in phrase in paragraph (a)(2)(iii)(B). FCIC is also revising the phrase “Any winter barley, oat or wheat” to add a comma after “oat.”

FCIC is also adding paragraph (a)(2)(iii)(D). This paragraph addresses situations, in counties with both winter and spring types listed in the actuarial documents, when acreage of the winter type is planted after the end of the late planting period. The Basic Provisions says that any acreage planted after the end of the late planting period may be insured if the producer chooses to insure it. If insured, then the acreage will be insured with a reduced guarantee equal to the production guarantee times the prevented planting coverage level percentage specified in the actuarial documents. In counties with both winter and spring types listed in the actuarial documents, winter types are not eligible for prevented planting so there is no prevented planting coverage level percentage listed in the actuarial documents to assign to it. Without a prevented planting coverage level, section 8(b)(2) of the Basic Provisions applies and the winter types are not insurable (e.g., the appropriate rates are not available to insure the crop). This new provision allows the acreage to be insured in the spring as the spring type, if the producer chooses to insure it and the AIP determines there is an adequate stand. This change treats all producers similarly to producers who plant winter types in counties with only a spring type listed in the actuarial documents.

FCIC is revising paragraph (a)(2)(iv) by revising the phrase “...any acreage of spring barley, oat or wheat...” to read “...any spring barley, oat or wheat acreage...”

Similarly, FCIC is revising paragraph (a)(2)(v) by revising the phrase “...any acreage of winter barley, oat or wheat...” to read “...any winter barley, oat or wheat acreage...” These revisions are consistent with revisions made in paragraph (a)(2)(iii).

In paragraphs (a)(2)(iv) and (v), FCIC is replacing the phrase “spring final planting date” with “spring type” in both places to be consistent with changes elsewhere in the Crop Provisions.

Also in paragraph (a)(2)(v), FCIC is revising the phrase “is not insured” to “will not be insured.” This is consistent with the language that was added in paragraph (a)(2)(iii)(D).

FCIC is also revising paragraph (a)(2)(v) to remove the phrase “agree in writing” as this could be misinterpreted to mean a written agreement, which is not the intent of the language, and could result in providing insurance via written agreement when it was not intended or appropriate. FCIC is replacing that phrase with language to clarify the AIP must inspect and give written confirmation that the acreage has an adequate stand in the spring to produce the yield used to determine your production guarantee. These clarifications will reduce the likelihood of fraud, waste, and abuse.

FCIC is revising paragraph (a)(2)(v)(D) by revising the phrase “...any acreage of such winter barley, oat or wheat...” to read “...any such winter barley, oat, or wheat acreage...” These revisions are consistent with revisions made in paragraphs (a)(2)(iii)-(v).

FCIC is also revising paragraphs (a)(2)(v) introductory text and (a)(2)(v)(A), (B), and (D) to change all references of “fall planted” to “winter” for consistency with changes elsewhere.

FCIC is revising paragraph (a)(2)(v)(E) to change the reference of “fall planted acreage” to “winter planted acreage” for consistency with changes elsewhere.

10. Section 9 – FCIC is replacing the phrase “winter coverage endorsement” with “Winter Coverage Endorsement” because it is the title of an endorsement.

FCIC is replacing the phrase “spring final planting date” with the phrase “spring type” in paragraph (a)(4) to accurately refer to the Special Provisions where insurable types and practices are listed.

FCIC is revising paragraph (b). The phrase “fall final planting date (including final planting dates in December, January and February)” is replaced with “winter type” to accurately refer to the Special Provisions where insurable types and practices are listed.

FCIC is revising paragraph (e) to replace the phrase “crop type” with “type” in the five places it appears. This is the only paragraph in the Crop Provisions where “crop type” is used. For consistency throughout the Crop Provisions, the word “crop” is removed.

11. Section 11 – FCIC is adding paragraph (d)(1)(v) to provide flexibility in the Special Provisions to update the moisture levels for each crop if it is determined that a level should be different than what is provided in the Crop Provisions.

FCIC is revising paragraph (d)(4) by replacing the phrase “contained in” with the phrase “calculated in accordance with.” The current provisions state that the quality adjustment factor is contained in the Special Provisions. However, there is no such factor stated in the Special Provisions. Instead, the quality adjustment factor is calculated using several different steps that are contained in the Special Provisions.

12. Section 13 – FCIC is removing the phrase “spring final planting date” and replacing it with the phrase “spring type.” FCIC is also revising the paragraph to move the first sentence to the end of the paragraph for ease of reading.

Comments Requested on Whether to Retain Section 9(a)(5)

Section 9(a)(5) states that damage must occur after the winter final planting date for the producer to be eligible for a replant payment, in counties with both winter and spring final planting dates. Provisions in section 7(a)(2)(iii) provide guidance on whether a crop should be replanted if damage occurs any time before the spring final planting date, which would also encompass any time before the winter final planting date since the winter final planting date comes before the spring final planting date in the crop year. As such, a producer is required to replant if damage occurs prior to the winter final planting date; however, no replanting payment is made in that timeframe. FCIC has received requests to remove this provision, thereby allowing replanting payments to be made in situations where damage occurs prior to the winter final planting date in counties with both winter and spring final planting dates. FCIC has also received opposing feedback requesting the provision remain intact because it is difficult or impossible to make a determination prior to the winter final planting date that acreage needs to be replanted or that it is practical to replant, except in cases of widespread weather events.

In addition to consideration of the future of section 9(a)(5), there are other provisions that may be affected by its removal. Section 9(b) states that no replanting payment is available in any circumstance for damage in counties with only a winter final planting date. Producers in these counties, like producers in counties with both winter and spring final planting dates, are required to replant if damage occurs prior to the winter final planting date, but no replanting payment is available. FCIC has received opposition to remove this provision, which, if removed, would allow replanting payments prior to the winter final planting date. In addition to the same opposing feedback FCIC received regarding removal of section 9(a)(5), FCIC also received feedback that in counties where only a winter type is insurable, there is a short window to replant a damaged crop. Replanting in these counties may contribute to later planting dates when

soil temperatures may be too low for germination. Unlike in counties where both winter and spring types are insurable, there is not an opportunity for producers to replant a damaged winter crop in the spring to retain coverage using the winter guarantee.

Further, the Winter Coverage Endorsement (WCE) provides optional coverage for barley and wheat producers from the winter final planting date until the spring final planting date in counties with both winter and spring final planting dates. If damage occurs during the WCE coverage period, the producer has three options: 1) continue to care for the damaged crop and coverage will continue under the terms of the Basic Provisions, the Small Grains Crop Insurance Provisions and the WCE; 2) replant the damaged acreage and receive a replanting payment; or 3) destroy all remaining acreage and accept an appraised amount of production determined in accordance with section 11(c)(1) of the Small Grains Crop Insurance Provisions to count against the unit production guarantee. The Common Crop Insurance Policy Basic Provisions says that no replanting payment will be made on acreage on which one replanting payment has already been allowed for the crop year. Assume section 9(a)(5) is removed, damage occurs prior to the winter final planting date, and a replanting payment is made. If the same acreage that received a replanting payment is damaged during the WCE coverage period, then the producer's options under the WCE have been narrowed down to two as he likely will not choose to replant knowing he will not receive a replanting payment. When the producer elected the WCE at sales closing time, he would have expected three options in the event of damage.

Finally, in general, a replanting payment will not be made if acreage is damaged and that acreage was planted before the earliest planting date if an earliest planting date is listed in the actuarial documents. There are counties with both winter and spring final planting dates that currently do not have an earliest planting date listed for the winter type. If section 9(a)(5) is removed, it is unclear if producers will plant earlier than they

have historically planted knowing that there is a potential for a replanting payment if the crop fails before the winter final planting date.

Specifically, FCIC requests comments on the following questions; please provide any data and information that supports your comments:

1. Should FCIC provide a replanting payment for the winter type prior to the winter final planting date (i.e., by removing section 9(a)(5))?
2. If section 9(a)(5) is removed, while section 9(b) is left intact, what concerns do you have that producers who plant a winter type in both counties would be treated differently regarding replanting payments: where producers in counties with both winter and spring final planting dates would receive a replanting payment prior to the winter final planting date and producers in counties with only a winter final planting date would not receive a replanting payment prior to the winter final planting date?
3. If section 9(a)(5) is removed, what concerns do you have that the producer may not be eligible for a replanting payment under the WCE if he has already received a replanting payment on the same acreage?
4. If section 9(a)(5) is removed, will FCIC need to create an earliest planting date for the winter types in counties where no earliest planting date exists to require that producers plant no earlier than a specific date in order to be eligible for a replanting payment?

Effective Date, Notice and Comment, and Exemptions

The Administrative Procedure Act (APA, 5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to contracts. This rule governs contracts for crop insurance policies and therefore falls within that exemption.

This rule is exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996.

For major rules, the Congressional Review Act requires a delay the effective date of 60 days after publication to allow for Congressional review. This rule is not a major rule under the Congressional Review Act, as defined by 5 U.S.C. 804(2). Therefore, this final rule is effective on the date of publication in the Federal Register. Although not required by APA or any other law, FCIC has chosen to request comments on this rule.

Executive Orders 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, “Regulatory Planning and Review,” and therefore, OMB has not reviewed this rule and analysis of the costs and benefits is not required under either Executive Order 12866 or 13563.

Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive

comments on this rule, we invite your comments on how to make the rule easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

Environmental Review

In general, the environmental impacts of rules are to be considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347) and the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508). FCIC conducts programs and activities that have been determined to have no individual or cumulative effect on the human environment. As specified in 7 CFR 1b.4, FCIC is categorically excluded from the preparation of an Environmental Analysis or Environmental Impact Statement unless the FCIC Manager (agency head) determines that an action may have a significant environmental effect. The FCIC Manager has determined this rule will not have a significant environmental effect. Therefore, FCIC will not prepare an environmental assessment or environmental impact statement for this action and this rule serves as documentation of the programmatic environmental compliance decision.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 are to be exhausted.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

RMA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that require Tribal consultation under EO 13175. The regulation changes do not have Tribal implications that preempt Tribal law and are not expected have a substantial direct effect on one or more Indian Tribes. If a Tribe requests consultation, RMA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified in this rule are not expressly mandated by Congress.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions of State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Program

The title and number of the Federal Domestic Assistance Program listed in the Catalog of Federal Domestic Assistance to which this rule applies is No. 10.450 – Crop Insurance.

Paperwork Reduction Act of 1995

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the rule does not change the information collection approved by OMB under control numbers 0563-0053.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from

a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720-2600 or 844-433-2774 (toll-free nationwide). Additionally, program information may be made available in languages other than English. To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or email: OAC@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

List of Subjects in 7 CFR Part 457

Acreage allotments, Crop insurance, Reporting and recordkeeping requirements.

Final Rule

For the reasons discussed above, FCIC amends 7 CFR part 457 as follows:

PART 457 - COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

2. Amend § 457.101 as follows:

a. Revise the introductory text;

- b. In section 1:
 - i. In the definition of “Khorasan”, remove the phrase “to be”;
 - ii. Revise the definition of “Latest final planting date”; and
 - iii. In the definition of “Small grains”, add the phrase “or as otherwise specified in the actuarial documents” at the end;
- c. Revise section 2;
- d. In section 3:
 - i. In paragraph (a), remove the semicolon at the end and add a period in its place;
and
 - ii. Revise paragraph (b)(2);
- e. In section 5, in the introductory text, remove the phrase “Special Provisions” and add in its place the phrase “actuarial documents”;
- f. In section 6, remove paragraph (e);
- g. In section 7:
 - i. In paragraph (a)(1) introductory text, remove the word “oats,” and add a comma after “flax”; and
 - ii. Revise paragraphs (a)(2) introductory text, (a)(2)(ii) thorough (iv), (c)(2)(v) introductory text, and (c)(2)(v)(A), (B), (D), and (E);
- h. In section 9:
 - i. In paragraph (a)(2), remove the phrase “winter coverage endorsement” and add in its place the phrase “Winter Coverage Endorsement”;
 - ii. In paragraph (a)(4), remove the phrase “final planting date” and add in its place the word “type”;
 - iii. In paragraph (a)(5), remove the word “fall” and add the word “winter” in all places where it appears;
 - iv. Revise paragraph (b);

- v. In paragraph (c)(2)(i), add a comma after “flax”; and
- vi. In paragraph, (e) remove the phrase “crop type” and add the word “type” in all places where it appears;
- i. In section 11:
 - i. Revise paragraphs (d)(1)(iii) and (iv);
 - ii. Add paragraph (d)(1)(v); and
 - iii. In paragraph (d)(4), remove the phrase “contained in” and add in its place the phrase “calculated in accordance with”;
- j. In section 12, remove the word “fall” and add the word “winter” in all places where it appears; and
- k. Revise section 13.

The revisions and additions read as follows:

§ 457.101 Small grains crop insurance provisions.

The Small Grains Crop Insurance Provisions for the 2022 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * *

Latest final planting date. (a) The final planting date for the spring type in all counties for which the Special Provisions designate a spring type only;

(b) The final planting date for the winter type in all counties for which the Special Provisions designate a winter type only; or

(c) The final planting date for the spring type in all counties for which the Special Provisions designate both spring and winter types.

* * * * *

2. Unit Division.

(a) In addition to enterprise units provided in section 34(a) of the Basic Provisions, for wheat only, you may elect separate enterprise units by type, as provided in this section, if allowed by the actuarial documents. If you elect enterprise units by type, you may not elect enterprise or optional units by irrigation practices.

(1) You may elect separate enterprise units by type unless otherwise specified in the Special Provisions. For example, if you have winter and spring types, you may elect one enterprise unit for the spring type or one enterprise unit for the winter type, or separate enterprise units for both types. Any acreage which is not reported and insured as an enterprise unit will be insured as basic or optional units, if requirements are met. For example, if you only have winter and spring types, you may have an enterprise unit for the winter type acreage and basic or optional units for the spring type acreage.

(2) You must separately meet the requirements in section 34(a)(4) of the Basic Provisions for each enterprise unit.

(3) If you elected separate enterprise units for multiple types and we discover enterprise unit qualifications are not separately met for all types in which you elected enterprise unit and such discovery is made:

(i) On or before the acreage reporting date, you may elect to insure:

(A) All types in which you elected an enterprise unit for meeting the requirements in section 34(a)(4) as separate enterprise units, and basic or optional units for any acreage that is not reported and insured as an enterprise unit, whichever you report on your acreage report and for which you qualify;

(B) One enterprise unit for all acreage of the crop in the county provided you meet the requirements in section 34(a)(4); or

(C) Basic or optional units for all acreage of the crop in the county, whichever you report on your acreage report and for which you qualify; or

(ii) At any time after the acreage reporting date, your unit structure will be one enterprise unit for all acreage of the crop in the county provided you meet the requirements in section 34(a)(4). Otherwise, we will assign the basic unit structure for all acreage of the crop in the county.

(4) If you elected an enterprise unit for only one type and we discover you do not qualify for an enterprise unit for that type and such discovery is made:

(i) On or before the acreage reporting date, your unit division for all acreage of the crop in the county will be based on basic or optional units, whichever you report on your acreage report and for which you qualify; or

(ii) At any time after the acreage reporting date, we will assign the basic unit structure for all acreage of the crop in the county.

(b) In addition to, or instead of, establishing optional units as provided in section 34(c) of the Basic Provisions, for wheat only, separate optional units may be established for each wheat type (designated in actuarial documents and including any type insured by written agreement) if each optional unit contains only initially-planted acreage of the type.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(b) * * *

(2) In counties with both winter and spring sales closing dates for the insured crop (excluding counties that have a spring sales closing date and a winter sales closing date only applicable to the Winter Coverage Endorsement):

(i) If you do not have any insurable winter-planted acreage of the insured crop, you may change your coverage level, or your percentage of projected price (if you have yield protection), or elect revenue protection or yield protection, until the spring sales closing date; or

(ii) If you have any insurable winter-planted acreage of the insured crop, you may not change your coverage level, or your percentage of projected price (if you have yield protection), or elect revenue protection or yield protection, after the winter sales closing date. Winter-planted acreage of the insured crop must be reported and insured if it meets the requirements in section 6.

* * * * *

7. Insurance Period.

* * * * *

(a) * * *

(2) For barley, oat, and wheat, the following limitations apply:

* * * * *

(ii) Whenever the Special Provisions designate only a winter type, any acreage of winter barley, oats, or wheat damaged before such final planting date, to the extent that producers in the area would normally not further care for the crop, must be replanted to a winter type of the insured crop unless we agree that replanting is not practical.

(iii) Whenever the Special Provisions designate both winter and spring types:

(A) Any winter barley, oat, or wheat acreage that is damaged before the spring final planting date, to the extent that producers in the area would normally not further care for the crop, must be replanted to a winter type of the insured crop to maintain insurance based on the winter type unless we agree that replanting is not practical. If it is not practical to replant to the winter type of barley, oats, or wheat, but is practical to replant to a spring type, you must replant to a spring type to keep your insurance based on the winter type in force.

(B) Any winter barley, oat, or wheat acreage that is replanted to a spring type of the same crop when it was practical to replant the winter type will be insured as the

spring type and the production guarantee, premium, projected price, and harvest price applicable to the spring type will be used. In this case, the acreage will be considered to be initially planted to the spring type.

(C) Notwithstanding sections 7(a)(2)(iii)(A) and (B), if you have elected coverage under a barley or wheat Winter Coverage Endorsement (if available in the county), insurance will be in accordance with the endorsement.

(D) Any winter barley, oat, or wheat acreage planted after the end of the late planting period will not be insured unless you request such coverage on or before the spring sales closing date, and we inspect and determine that the acreage has an adequate stand in the spring to produce the yield used to determine your production guarantee. However, if we fail to inspect the acreage by the spring final planting date, insurance will attach as specified in section 7(a)(2)(iii)(D)(3).

(1) Your request for coverage must include the location and number of acres of winter barley, oats, or wheat.

(2) The winter barley, oats, or wheat will be insured as a spring type for the purpose of the production guarantee, premium, projected price, and harvest price, if applicable.

(3) Insurance will attach to such acreage on the date we determine an adequate stand exists or on the spring final planting date if we do not determine adequacy of the stand by the spring final planting date.

(iv) Whenever the Special Provisions designate a spring type, any spring barley, oat, or wheat acreage damaged before such final planting date, to the extent that producers in the area would normally not further care for the crop, must be replanted to a spring type of the insured crop unless we agree that replanting is not practical.

(v) Whenever the Special Provisions designate only a spring type, any winter barley, oat, or wheat acreage will not be insured unless you request such coverage on or

before the spring sales closing date, and we inspect and give written confirmation that the acreage has an adequate stand in the spring to produce the yield used to determine your production guarantee. However, if we fail to inspect the acreage by the spring final planting date, insurance will attach as specified in section 7(a)(2)(v)(C).

(A) Your request for coverage must include the location and number of acres of winter barley, oats, or wheat.

(B) The winter barley, oats, or wheat will be insured as a spring type for the purpose of the production guarantee, premium, projected price, and harvest price, if applicable.

* * * * *

(D) Any such winter barley, oats, or wheat acreage that is damaged after it is accepted for insurance but before the spring final planting date, to the extent that producers in the area would normally not further care for the crop, must be replanted to a spring type of the insured crop unless we agree it is not practical to replant.

(E) If winter-planted acreage is not to be insured it must be recorded on the acreage report as uninsured winter-planted acreage.

* * * * *

9. Replanting Payments.

* * * * *

(b) No replanting payment will be made for acreage initially planted to a winter type of the insured crop (including rye) in any county for which the Special Provisions contain only a winter type.

* * * * *

11. Settlement of Claim.

* * * * *

(d) * * *

(1) * * *

(iii) 14.0 percent for oats;

(iv) 16.0 percent for rye and buckwheat; or

(v) As otherwise provided in the Special Provisions.

* * * * *

13. Prevented Planting.

Your prevented planting coverage will be a percentage specified in the actuarial documents of your production guarantee for timely planted acreage. If you have additional coverage and pay an additional premium, you may increase your prevented planting coverage if such additional coverage is specified in the actuarial documents. In counties for which the Special Provisions designate a spring type, your prevented planting production guarantee will be based on your approved yield for spring-planted acreage of the insured crop.

§ 457.118 [Removed and Reserved]

3. Remove and reserve § 457.118.

Richard Flournoy,
Acting Manager,
Federal Crop Insurance Corporation.

[FR Doc. 2021-13113 Filed: 6/24/2021 8:45 am; Publication Date: 6/25/2021]